

**FINAL REPORT  
OF THE  
CRIMINAL LAW  
AND  
SENTENCING POLICY  
STUDY COMMITTEE**



**Indiana Legislative Services Agency  
200 W. Washington St., Suite 301  
Indianapolis, Indiana 46204-2789**

**November 2012**

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# **Criminal Law and Sentencing Policy Study Committee**

## **Membership Roster**

### **Representatives**

**Greg Steuerwald, Chair  
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**Edward DeLaney  
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**Ralph Foley  
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**Brent Steele  
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## **Lay Members**

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**Hon. Stephen R. Heimann  
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**Don Travis  
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**Commission Bruce Lemmon  
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**David Powell  
Indianapolis**

## **Legislative Services Agency Staff**

**Mark Goodpaster, Fiscal Analyst**

**Andrew Hedges, Attorney**

**K.C. Norwalk, Attorney**

**Timothy Tyler, Attorney**

## **Criminal Justice Institute**

**Sue Vansickle, Executive Staff Administrative Assistant**

**November 2012**

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

## FINAL REPORT

### **Criminal Law and Sentencing Policy Study Committee**

#### **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Indiana General Assembly enacted IC 2-5.5-5 creating the Criminal Law and Sentencing Policy Study Committee.

(a) The committee is established to evaluate criminal laws, sentencing laws, and policies as they relate to:

- (1) the purposes of the criminal justice and corrections systems;
- (2) the availability of sentencing options; and
- (3) the inmate population in department of correction facilities.

If, based on the committee's evaluation under this subsection, the committee determines that changes are necessary or appropriate, the committee shall make recommendations to the General Assembly for the modification of sentencing laws and policies and for the addition, deletion, or expansion of sentencing options.

(b) The committee shall do the following:

(1) Conduct a continuing study of the laws relating to:

- (A) the investigation of crimes;
- (B) the prosecution of crimes;
- (C) criminal procedures;
- (D) alternative sentencing programs;
- (E) the Department of Correction;
- (F) parole;
- (G) probation;
- (H) community corrections;
- (I) home detention programs;
- (J) criminal registries;
- (K) victim rights;
- (L) the classification of criminal offenses into felony and misdemeanor categories;
- (M) sex offenders; and
- (N) juvenile offenders.

(2) Study federal requirements or incentives for states to pass certain laws or establish specific programs.

(3) Determine the long-range needs of the criminal justice and corrections systems and recommend policy priorities for those systems.

- (4) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve the problems.
- (5) Assess the cost effectiveness of the use of state and local funds in the criminal justice and corrections systems.
- (6) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems.

The committee may study other topics assigned by the Legislative Council or as directed by the committee chair. The committee may meet as often as necessary.

For the 2011 interim, the Legislative Council assigned the following topics for the committee to examine:

- A. The proposal that this committee be required to review all requests for proposed legislative or constitutional changes in criminal law, criminal procedure, the law governing delinquent acts, or juvenile court procedures related to alleged delinquent acts before they are considered by the House of Representatives or Senate, unless the proposed change in criminal law has been approved by certain legislative committees and specific amounts of money have been appropriated to the Department of Correction if certain Department expenses will increase (SB 558, HB 1571);
- B. Truth in sentencing, good time credit and earned credit time, and felony classifications (SB 561, HB 1530);
- C. Developing a criminal information packet that would contain all relevant information that pertains to an offender's dangerousness or lack of dangerousness, including: (1) the original charges; (2) the terms of any plea agreement; (3) whether the jury found the offender guilty of lesser included offenses; and (4) any other information that would allow a more accurate assessment of an offender's character (SB 561);

- D. The criminal laws regarding marijuana (SR 20, 70); and
- E. Issues regarding the establishment of a child protection registry (SR 84).

For the 2012 Interim, the Legislative Council requested the Committee to examine the following issues:

- A. The provisions of IC 24-4-18 concerning criminal history providers and the need for any legislation to amend IC 24-4-18 before IC 24-4-18 takes effect on July 1, 2013 (HEA 1033); and
- B. The Sex and Violent Offender Registry (HR 20).

## **II. SUMMARY OF WORK PROGRAM**

The Committee met three times during the 2011 interim: July 28, August 18, and October 13.

The Committee also met four times during the 2012 interim: August 23, October 4, October 17, and October 25.

All meetings were held at the State House in Indianapolis.

## **III. SUMMARY OF TESTIMONY**

For a more detailed account, minutes for the Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>

During the 2011 interim, three meetings were held.

### **July 28, 2011, Meeting**

Individuals representing a variety of agencies and organizations testified as to the potential benefits and disadvantages of reforming Indiana's current marijuana laws.

### **August 18, 2011, Meeting**

The committee examined the issue of parental duty to notify law

enforcement upon the death of a child or when a child is missing. Senator Steele noted the Casey Anthony case and asked the Committee to consider whether people should be penalized for the failure to report a dead body or the failure to report a missing child. Sen. Steele noted that there must be a balance between reporting every absent child to law enforcement and protecting the safety of children.

The Committee also examined the topic of a Child Protective Registry ("CPR"). Senator Head explained that the CPR would be a registry of a child's email, email to which a child has access, and other similar contact information for the child. Internet marketers who are advertising anything that a child is not legally allowed to purchase would submit a list of email addresses to the state and receive in return an email list that does not have the names of registered children on it. The Secretary of State's office agreed to house the registry.

Eric Langheinrich of Unspam, the vendor for the CPR in Michigan and Utah, described how the CPR would work. He noted that in those states vendors are required to submit their mailing lists to the system every 30 days.

#### October 13, 2011, Meeting

Legislative Services Agency Attorney Andrew Hedges presented PD 3689 to the Committee.

Its provisions include:

- (1) specifying that the same procedures apply to sealing the records of convicted persons and persons who have not been convicted;
- (2) making the petition to seal records confidential;
- (3) specifying that the requirement to seal certain records applies to noncriminal justice agencies (including the BMV); and
- (4) making the knowing or intentional disclosure of certain records a Class B misdemeanor.

Deborah Daniels summarized the work that the Criminal Code Evaluation Commission's research team has presented to the Criminal Code Evaluation Commission. Ms. Daniels described:

- (1) the current sentencing scheme for controlled substances;
- (2) a new controlled substances felony proportionality proposal;
- (3) potential changes to the marijuana sentencing statutes; and

(4) proposed changes to suspended sentences.

Representative Foley testified that the Data Analysis Work Group (DAWG) was established to provide accurate data concerning criminal offenders. Accurate data is necessary for the legislature to adopt effective policies and to measure the effectiveness of current policies.

Department of Correction (DOC) Deputy Director Randy Koester testified that DOC wishes to better use electronic storage and transmission of certain documents. This would make certain procedures more efficient and assist in obtaining more accurate data.

During the 2012 interim, four meetings were held.

#### August 23, 2012, Meeting

At this meeting the committee heard from persons concerned with the regulation of criminal history providers and the sex and violent offender registry.

#### Issues Regarding Criminal History Providers -

The following persons described the difficulties that some clerks were having with complying with HEA 1033:

Terri J. Rethlake, Clerk of the St. Joseph Circuit Court and Treasurer of the Clerks Association.

Peggy Mayfield, Clerk of the Morgan Circuit Court and the legislative chair of the Indiana Clerks Association.

Danielle R. Coulter, Deputy Director of the Government Affairs, Association of Indiana Counties.

Luke Rollins, Senior Manager, State Government Affairs-Midwest, Reed Elsevier Inc., and Chris Lemons, Executive Vice President and General Counsel of BackGroundChecks.com and General Information Services, testified on behalf of the Coalition for Sensible Public Records Access.

#### Issues Regarding the Sex and Violent Offender Registry -

Steve Luce, Executive Director of the Indiana Sheriffs Association,



described the efforts of the Indiana Sheriffs Association to comply with sex offender laws and requirements. He also distributed the written guidelines that sheriffs and their staffs use to register sex offenders.

Detective Jeff Shimkus proposed several changes to the sex offender registry statute.

Robin Miller, representing the Indiana Reform of Sex Offender Laws, testified as an advocate for changing sex offender registration laws.

Brent Myers, Director of Registration and Victims Services for DOC, described the development of the sex offender registry in Indiana between 1994 and 2012.

Mary I. Allen, Executive Director, Indiana Criminal Justice Institute, testified in regards to the potential loss of federal funds due to noncompliance with the Sex Offender Registry and Notification Act.

Charles Goodman described his history involving the resolution. Mr. Goodman spoke of his concerns of the individuals that should or should not be listed in the sex offender registry, Adam Walsh, and being in compliance with the federal law.

#### October 4, 2012, Meeting

Mark Goodpaster, Fiscal Analyst for the Committee, presented a staff report about how other states regulate providing bulk records to criminal history providers and requiring the providers to periodically update the criminal records that they use to issue the criminal history reports.

Mary DePrez, Director and Counsel for Trial Court Technology, and Donna Edgar, Project Manager, demonstrated how the Odyssey statewide case management system works.

Major Douglas Shelton described the criminal history information that is maintained by the Indiana State Police to the Committee.

Steve Luce, Executive Director of the Indiana Sheriffs Association, discussed in further detail the administration of the Sex Offender Registry.

Adam Deming, Psy.D. Liberty Behavioral Health Corporation and Executive Director, Indiana Sex Offender Management and Monitoring Program, described the management and monitoring of sex offenders.

#### October 17, 2012, Meeting

Andrew Hedges presented a bill draft concerning the regulation of criminal history providers.

Luke Rollins, Senior Manager, State Government Affairs-Midwest, Reed Elsevier Inc., answered questions about the proposed language.

Danielle Coulter, Deputy Director of Governmental Affairs of the Association of Indiana Counties, testified about the concerns that the Association of Indiana Counties and the Clerks Association have regarding HEA 1033 – 2012.

Detective Jeff Shimkus testified about the proposed language to modify the sex offender registry statute.

#### October 25, 2012, Meeting

For criminal history providers, the committee voted to recommend draft language to be introduced during the 2013 General Assembly that addresses recent court rulings that restrict the public availability of criminal history information from the public portal of the sex offender registry; specifying registration requirements for certain offenses against persons; and some modifications for managing and monitoring requirements for offenders who must remain on the sex offender registry.

During the discussion, Detective Jeff Shimkus, Allen County Sheriffs Office, spoke about the following:

- The responsibility for sex offenders to report when either changing residence or leaving for a short term from their current residence; and
- The issues classifying certain violent offenders as offenders against children.

Concerning criminal history providers, the committee voted to recommend draft language to be introduced during the 2013 General Assembly. This language addresses issues relating to clerks of circuit courts, the types of criminal history information that criminal history

providers report, other regulations of criminal history providers, and the public availability of infractions over five years old.

During the discussion, Chris Lemmons, Backgroundchecks.com, discussed the need for criminal history providers to have the last four digits of the person's social security number to accurately identify criminal records.

#### **IV. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Committee made the following recommendations.

The Committee recommended the following draft language be introduced in the 2013 General Assembly:

Provision #1 (See Exhibit A of the October 25, 2012, meeting.) –  
Concerning the regulation of sex offenders and the sex offender registry, the committee recommends the following:

- A. It requires the Department of Correction to remove the information relating to a sex or violent offender who is deceased or no longer required to register from the public portal of the sex offender registry.
- B. It requires persons convicted of kidnapping and criminal confinement to register only if a court finds by clear and convincing evidence that the offense was committed for a sexual purpose.
- C. It adds the vehicle identification number to the information required for sex offender registration, requires an offender to report certain information changes within 72 hours, and requires that an offender's license or identification card must contain the offender's current address and physical description.
- D. It provides that an offender who is scheduled to move must register in the appropriate location within 72 hours.
- E. It removes the requirement that a local law enforcement authority contact offenders by mail and permits them to contact the offenders in a manner approved by the Department of Correction.
- F. It makes other conforming amendments and technical corrections.

Provision #2 (See Exhibit B of the October 25, 2012, meeting.) –  
Concerning the regulation of criminal history providers, the committee recommends the following:

- A. Specifying that the clerk of a court is not a "criminal history provider".
- B. Expanding the type of information that can be included in a criminal history report. (Under current law, only information that relates to a conviction may be provided.)
- C. Allowing a criminal history provider to provide certain information concerning expunged, restricted, or reduced convictions to a person required by law to obtain this information.

- D. Specifying that a criminal history provider does not violate the requirement to provide current information if the public records used to obtain the information are not current.
- E. Providing that a violation of these requirements is a deceptive act.
- F. Repealing a requirement for a clerk to restrict disclosure of an infraction five years after it has been satisfied and including new language to permit a person to petition a court to restrict disclosure of an infraction five years after it has been satisfied.

## WITNESS LIST

### July 28, 2011, Meeting

Daniel Abrahamson, Director of Legal Affairs for the Drug Policy Alliance

Marc Bilodeau, Associate Professor of Economics, IUPUI

Clark Brattain, M.D.

Steve Dillon, Indianapolis-based criminal defense attorney

Matthew Frank, owner of the Clear Morning Health Store in Bloomington, Indiana

Jon Gettman, Ph.D., Visiting Assistant Professor of Criminal Justice at Schoville University

Kimberly Hickman

Dick Huber, M.D.

Bill Levin

Noah Mamber, Legislative Analyst for the Marijuana Policy Project

Andrew Maternowski, criminal defense attorney

Chad Padgett, Law Enforcement Against Prohibition

Deb Perish

Neil Smith, Chairman of the Indiana Chapter of the National Organization for the Reform of Marijuana Laws

Jennifer Warner

### August 18, 2011, Meeting

Randy Koester, Deputy Commissioner of Reentry, Indiana Department of Correction

Eric Langheinrich, Unspam

Mark Shublak, Email Sender and Provider Coalition

Carl Szabo, Net Choice

### October 13, 2011, Meeting

Deborah Daniels, Krieg Devault, LLP

Andrew Hedges, Attorney, Legislative Services Agency

Steve Key, Executive Director, Hoosier State Press Association

Randy Koester, Deputy Commissioner of Reentry, Indiana Department of Correction

John von Arx

### August 23, 2012, Meeting

Mary L. Allen, Executive Director, Indiana Criminal Justice Institute

Danielle R. Coulter, Deputy Director of the Government Affairs, Association  
of Indiana Counties

Charles Goodman

Chris Lemons, Executive Vice President and General Counsel of  
BackGroundChecks.com and General Information Services

Steve Luce, Executive Director, Indiana Sheriffs Association

Peggy Mayfield, Clerk of the Morgan Circuit Court and the legislative chair  
of the Indiana Clerks Association

Robin Miller, Indiana Reform of Sex Offender Laws

Brent Myers, Director of Registration and Victims Services, Indiana  
Department of  
Correction

Terri J. Rethlake, Clerk of the St. Joseph Circuit Court and Treasurer of the  
Clerks Association

Luke Rollins, Senior Manager, State Government Affairs-Midwest, Reed  
Elsevier Inc.

#### October 4, 2012, Meeting

Dr. Adam Deming, Executive Director, Indiana Sex Offender Management  
Monitoring Program

Mary DePrez, Executive Director, Judicial Technology and Automation  
Committee

Donna Edgar, Project Manager, Judicial Technology and Automation  
Committee

Andrew Hedges, Attorney, Legislative Services Agency

Steve Luce, Executive Director, Indiana Sheriffs Association

Major Douglas Shelton, Indiana State Police

Luke Rollins, Senior Manager, State Government Affairs-Midwest, Reed  
Elsevier Inc.

Jeff Shimkus, Detective, Allen County Sheriff's Department

Senator Greg Taylor

#### October 17, 2012, Meeting

Danielle R. Coulter, Deputy Director of the Government Affairs, Association  
of Indiana Counties

Andrew Hedges, Attorney, Legislative Services Agency

Steve Luce, Executive Director, Indiana Sheriffs Association

David Miller, Director of Legislative Services, Attorney General's Office

Matt Light, Deputy Attorney General, Advisory Board Division

Luke Rollins, Senior Manager, State Government Affairs-Midwest, Reed Elsevier Inc.

October 25, 2012, Meeting

Andrew Hedges, Attorney, Legislative Services Agency

Jeff Shimkus, Detective, Allen County Sheriff's Department

Chris Lemons, Executive Vice President and General Counsel of  
BackGroundChecks.com and General Information Services